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## Court ruling on actor disqualified from role for refusing COVID vaccine has long-lasting implications

The court found Apple acted reasonably in requiring actors on its set to be vaccinated

On March 1, 2022, Apple Studios conditionally offered Brent Sexton a \$595,000-plus contract to play President Andrew Johnson, Abraham Lincoln's successor, in "Manhunt," a limited series about the pursuit of Lincoln's assassin, John Wilkes Booth. That was during the COVID-19 pandemic. The offer was conditioned on Sexton being fully vaccinated.

Sexton sought a medical exemption from the vaccine mandate based on his history of blood clotting. He claimed the vaccine would increase the risk of blood clots.

Apple rejected Sexton's request, concluding the actor playing Johnson had to be vaccinated to keep the workplace safe. Apple did not believe daily testing for COVID-19 was an adequate alternative to vaccination. Apple based its conclusion on guidance from government health officials.

Having Sexton wear a mask or socially distance as Johnson, explained an executive producer, "would have prohibited the creative team from telling the story they were hired to tell."

Sexton sued Apple for disability discrimination, invasion of privacy and related claims. Apple sought dismissal of the action under California's anti-SLAPP statute, a law enabling early dismissal of lawsuits found to lack minimal merit against defendants arising from defendants' free speech conduct implicating issues of public interest.

In *Sexton v. Apple Studios LLC*, the California court of appeal recently sided with Apple, reversing the trial court's ruling allowing Sexton's lawsuit to proceed. Here's why.

### Two public issues

The court found Apple's freedom of expression on two public issues (one would have been enough) were linked to Apple's casting decision, the challenged activity at the heart of Sexton's lawsuit. The first issue was Apple's stance in the ongoing vaccination debate. By conditioning Sexton's job offer on being vaccinated, Apple "contributed to public discussion of vaccination policy. In the face of a public debate over vaccination policy, Apple took a stand: it made vaccines mandatory on this set."

The second public issue Apple's casting decision raised was the ongoing debate over President Andrew Johnson's legacy. Johnson was a central figure in the Reconstruction era that followed the Civil War. "What should modern film viewers make of a president who claimed to be a Moses to Black Americans but whose presidency oppressed them? How would Apple – and the actor it selected – portray this character?"

The court continued: The “anti-SLAPP statute covers significant media decisions about who will perform important roles for a wide public audience ... Deciding who would play Johnson would contribute to how audiences might understand his legacy because the actor Apple selected would strive to become Johnson for a new era.”

### **Court concluded Sexton’s claims lacked even minimal merit**

The court of appeal concluded Sexton was unlikely to win his case. Sexton’s invasion of privacy claim lacked merit because he had no reasonable expectation of privacy. Private employers have a duty to maintain a safe workplace. Courts will not second-guess the safety measures employers adopt, even when those measures infringe on an employee’s privacy, unless the measures are unreasonable under the circumstances.

The court found Apple acted reasonably in requiring actors on its set to be vaccinated. “A consensus of scientific opinion supported mandatory vaccination. Public health officials recommended vaccinations. Sexton’s union wanted a mandatory vaccination.” Under the circumstances, then, Apple simply was “following contemporary conventional wisdom about how to protect its workforce and combat a pandemic.”

Sexton’s disability discrimination-related claims failed because his refusal to satisfy Apple’s safety condition that he be vaccinated made him unqualified to act on the “Manhunt” set. Apple reasonably concluded, said the court, that neither testing nor any other accommodation for his medical condition was feasible. “Sexton’s position boils down to his (legally unsupported) claim that he had a right to impose a potentially deadly risk on coworkers so he could act in Manhunt.”

### **Future implications**

Mandatory employee on-site work has replaced mandatory employee vaccination as a [hot workplace topic](#). Employers that prohibit remote work, based on their reasonable belief in the unique benefits of in-person collaboration, implicitly pick a side in this public debate. An applicant whose offer was conditioned on on-site work and who claims, improbably, the only reasonable accommodation for their particular disability is remote work may face early dismissal of a lawsuit challenging withdrawal of the offer.

The pandemic is over; COVID-19 persists. Private employers’ COVID-19 vaccination mandates mostly have lapsed. Yet the Sexton case will guide future cases raising issues unrelated to the creative process or COVID-19. This is COVID-19’s latest stamp on the law at work. It won’t be the last.

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